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**U.S. District Court
Northern District of Ohio (Youngstown)
CIVIL DOCKET FOR CASE #: 4:07-cv-03418-PCE
Internal Use Only**

Dinesol Building Products, Ltd. v. Bluegrass Products, LLC
Assigned to: Judge Peter C. Economus
Cause: 28:1331 Fed. Question

Date Filed: 11/02/2007
Date Terminated: 05/13/2008
Jury Demand: Both
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

Dinesol Building Products, Ltd.

Pat. # 6,825,414

represented by **H. Alan Rothenbuecher**
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V.

Defendant

Bluegrass Products, LLC

represented by **Thomas H. Shunk**
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216-861-7592
Fax: 216-373-6557

CERTIFICATE OF SERVICE

I hereby certify that on May 9th, 2008, I electronically filed a Stipulated Judgment of Dismissal Without Prejudice with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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Attorneys for Defendant
Bluegrass Products, LLC

Respectfully Submitted,

Dated: May 9, 2008

s/Robert J. Herberger/
Robert J. Herberger (Ohio 0043848)
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Evaluator

George W. Rooney, Jr.
Evaluator

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Counter-Claimant

Bluegrass Products, LLC

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V.

Counter-Defendant

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Date Filed	#	Docket Text
11/02/2007	<u>1</u>	Complaint with jury demand against Bluegrass Products, LLC. Filing fee of \$350 paid; receipt number 44660000796. Filed by Dinesol Building Products, Ltd. Copy manually issued to counsel. (Attachments: # <u>1</u> Exhibit # <u>2</u> Civil Cover Sheet # <u>3</u> Summons)(S, L) (Entered: 11/02/2007)
11/02/2007	<u>2</u>	Corporate Disclosure Statement filed by Dinesol Building Products, Ltd.(S, L) (Entered: 11/02/2007)
11/02/2007		Judge Peter C. Economus assigned to case. (S, L) (Entered: 11/02/2007)
11/02/2007		Random Assignment of Magistrate Judge pursuant to Local Rule 3.1. In the event of a referral, case will be assigned to Magistrate Judge James S. Gallas. (S, L) (Entered: 11/02/2007)
11/02/2007	<u>3</u>	Summons and Magistrate Consent Form manually issued for service upon

		Bluegrass Products, LLC. (Attachments: # <u>1</u> Magistrate Consent Form) (S,L) (Entered: 11/02/2007)
11/09/2007	<u>4</u>	Notice of Waiver of Service of Summons filed by Dinesol Building Products, Ltd.. (Attachments: # <u>1</u> Exhibit A-Waiver of Service of Summons) (Rothenbuecher, H.) (Entered: 11/09/2007)
01/04/2008	<u>5</u>	Answer to <u>1</u> Complaint, with Jury Demand, Counterclaim against Dinesol Building Products, Ltd. filed by Bluegrass Products, LLC. (Attachments: # <u>1</u> Exhibit A - US Patent No. 6,825,414 B2)(Shunk, Thomas) (Entered: 01/04/2008)
01/11/2008	<u>6</u>	Reply to <u>5</u> Answer to Complaint, Counterclaim of Bluegrass Products, LLC filed by Dinesol Building Products, Ltd.. (Herberger, Robert) (Entered: 01/11/2008)
01/24/2008	<u>7</u>	Case Management Conference Scheduling Order with case management conference to be held on 2/15/2008 at 9:00 AM at Chambers 313 before Judge Peter C. Economus. Signed by Judge Peter C. Economus on 1/24/08. (Attachments: # <u>1</u> Planning Report)(BR,S) (Entered: 01/24/2008)
01/24/2008	<u>8</u>	Notice of Magistrate Consent form (BR,S) (Entered: 01/24/2008)
01/28/2008	<u>9</u>	Motion to excuse appearance of Defendant's representative, or in the alternative to reschedule the Case Management Conference filed by Defendant Bluegrass Products, LLC. Related document(s) <u>7</u> . (Shunk, Thomas) (Entered: 01/28/2008)
01/28/2008		Order granting Defendant's Motion to excuse appearance of personal representative at Case Management Conference (Related Doc # <u>9</u>). Judge Peter C. Economus on 1/28/08.(BR,S) (Entered: 01/28/2008)
02/07/2008	<u>10</u>	Corporate Disclosure Statement filed by Dinesol Building Products, Ltd. (Herberger, Robert) Modified text 2/14/2008 (S,L). (Entered: 02/07/2008)
02/08/2008	<u>11</u>	Joint Report of Parties' Planning Meeting Scheduled February 15, 2008. Parties do not consent to this case being assigned to the magistrate judge. filed by Dinesol Building Products, Ltd.. (Herberger, Robert) (Entered: 02/08/2008)
02/08/2008	<u>12</u>	Order of Referral of this case to ADR for Early Neutral Evaluation. The Court orders that all discovery is stayed. The parties shall contact the court once this process is completed. Signed by Judge Peter C. Economus. (BR,S) (Entered: 02/08/2008)
02/13/2008	<u>13</u>	List of potential neutrals sent to parties. Neutral selection due by 2/25/2008 (Related document(s) <u>12</u>) (Attachments: #(1)-Neutral List). (N, P) (Entered: 02/13/2008)
02/15/2008	<u>14</u>	Agreed ENE Ranking Information Sheet Filed by Dinesol Building Products, Ltd.(Herberger, Robert) (Entered: 02/15/2008)
02/19/2008	<u>15</u>	Notice sent to the first potential neutral, re: conflict request. Neutral Conflict Response due by 2/21/2008 (Related document(s) <u>14</u>). (N, P) (Entered: 02/19/2008)

		02/19/2008)
02/22/2008	<u>16</u>	Notice received from the first potential neutral, re: conflict. Neutral available: No (Related document(s) <u>15</u>). (N, P) (Entered: 02/22/2008)
02/25/2008	<u>17</u>	Notice sent to the second potential neutral, re: conflict request. Neutral Conflict Response due by 2/28/2008 (Related document(s) <u>14</u>). (N, P) (Entered: 02/25/2008)
02/26/2008	<u>18</u>	Notice received from the second potential neutral, re: conflict. Neutral available: Yes (Related document(s) <u>17</u>). (N, P) (Entered: 02/26/2008)
02/28/2008	<u>19</u>	Notice of Designation of Evaluator. Evaluator advised to schedule ENE session on or before 4/28/2008. Report of Evaluator to be manually filed with the ADR Administrator no later than 5/8/2008. REPORT OF EVALUATOR FORM ATTACHED TO THE NOTICE OF DESIGNATION. Counsel/parties to contact the Evaluator for the purposes of scheduling the ENE session. Evaluator to schedule ENE session and FILE ELECTRONIC NOTICE setting forth the date, time and location of the ENE session. ENE process to be completed by 5/8/2008. Designated Neutral: George W. Rooney, Jr. (Related document(s) <u>18</u>). (N, P) (Entered: 02/28/2008)
03/28/2008		(Court only) Staff Notes: The Evaluator conducted an ENE session on 3/27/2008. A subsequent ENE session will be held on 4/28/2008. The Evaluator will electronically file a notice which indicates the case is set for a subsequent ENE session (Related document(s) <u>19</u>). (N, P) (Entered: 03/28/2008)
04/01/2008	<u>20</u>	Schedules ENE session & Report of Evaluator deadline, with second ENE session to be held on 4/28/2008 at 10:00 AM at the Evaluator's office, 1375 East Ninth Street, One Cleveland Center, Cleveland, OH. Report of Evaluator to be manually filed with the ADR Administrator no later than 5/8/2008, filed by George W. Rooney, Jr. (Related document(s) <u>19</u>). (N, P) (Entered: 04/01/2008)
05/09/2008	<u>21</u>	Joint Proposed Stipulation of Dismissal Without Prejudice filed by all parties. (Herberger, Robert) (Entered: 05/09/2008)
05/13/2008	<u>22</u>	Order: Upon representation of counsel this case is dismissed, with each party to pay their own costs. Signed by Judge Peter C. Economus on 5/13/08. (BR,S) (Entered: 05/13/2008)

FILED

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

CASE NO: 4:07 CV 03418

JUDGE JUDGE ECONOMUS

MAG. JUDGE GALLAS

DINESOL BUILDING PRODUCTS, LTD.
168 N. Meridian Road
Youngstown, Ohio 44509

Plaintiff

v.

BLUEGRASS PRODUCTS, L.L.C.
7930 Kentucky Drive
Florence, Kentucky 41042

Defendant

**COMPLAINT FOR DECLARATORY
JUDGMENT OF PATENT NON-
INFRINGEMENT, INVALIDITY
AND UNENFORCEABILITY**

Now comes Plaintiff Dinesol Building Products, Ltd. (hereinafter "Plaintiff"), by and through undersigned counsel and by way of Complaint against Defendant Bluegrass Products, L.L.C. ("hereinafter Defendant"), hereby states as follows:

JURISDICTION AND PARTIES

1. This is an action for a declaratory judgment pursuant to the United States Declaratory Judgments Act, 28 U.S.C. § 2201, *et seq.* The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338 because the coercive claims threatened by Defendant against Plaintiff which give rise to the existence of an actual controversy under 28 U.S.C. § 2201(a) arise under the United States Patent Act, 35 U.S.C. § 271.

2. This Court has personal jurisdiction over Defendant because it transacts business in the State of Ohio and in this Judicial District.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400 because the Northern District of Ohio is a judicial district in which a substantial part of the events, actions and/or omissions giving rise to the actual controversy occurred.

4. Plaintiff is a limited liability company duly organized and operating under the laws of the State of Ohio, with its principal place of business in Mahoning County, Ohio.

5. Upon information and belief, Defendant is a limited liability company with its principal place of business located at 7930 Kentucky Drive, Florence, Kentucky 41042.

CAUSE OF ACTION

6. Plaintiff restates the allegations contained in the foregoing paragraphs 1 through 5, as if fully rewritten herein.

7. Plaintiff designs, manufactures, and sells a variety of plastic building products for use in the construction industry, including utility mounting bases.

8. By letter of counsel dated October 22, 2007 (copy attached hereto and marked Exhibit A), Defendant claims that the Plaintiff's manufacture and sale of plastic utility mounting bases, as well as use by its customers, infringe U.S. Patent No. 6,825,414 (hereinafter referred to as " '414 Patent"), to which Defendant claims it possesses valid ownership rights.

9. Plaintiff denies that its manufacture and sale of plastic utility mounting bases infringe the aforesaid patent. Plaintiff is also informed and believes, and on that basis alleges, that said patent is invalid and unenforceable. As a result, Plaintiff does not intend to cease the manufacture and sale of the product in question.

10. The aforesaid letter (Exhibit A) demands that Plaintiff cease all current activities that allegedly constitute infringement and account for past sales, commonly referred to in the

intellectual law practice as a "cease and desist letter." As a result of said letter, Plaintiff has a reasonable and imminent apprehension of being sued immediately for patent infringement under 35 U.S.C. § 271 and, therefore, there exist an actual and justiciable case and controversy over Plaintiff's rights to continue to manufacture and sell plastic utility mounting bases.

11. Plaintiff is entitled to a declaratory judgment that its plastic utility mounting bases do not infringe Defendant's patent and that Defendant's patent is invalid and unenforceable.

12. Unless enjoined, Defendant will continue to improperly and illegally threaten and harass Plaintiff and otherwise interfere with the legitimate operation of its business, for which Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment as follows:

1. Declaring that Plaintiff's manufacture and sale of plastic utility mounting bases, and use by its customers, does not infringe Defendant's claimed rights in the '414 Patent;
2. Declare that the '414 Patent is invalid and unenforceable;
3. Enjoining Defendant from pursuing further any claims for infringement on the basis of Plaintiff's manufacture and sales, and/or use by its customers, of plastic utility mounting bases;
4. Awarding Plaintiff its attorneys fees and costs in this action; and
5. Granting Plaintiff such other and further relief as this Court may deem just and proper.

Dated: November 2, 2007


RESPECTFULLY SUBMITTED,

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*Attorneys for Plaintiff
Dinesol Building Products, Ltd.*

JURY DEMAND

A jury trial is hereby demanded in the foregoing action.


**ROBERT J. HERBERGER
COUNSEL FOR PLAINTIFF**

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DINESOL BUILDING PRODUCTS, Ltd.,)	CASE NO. 4:07 CV 03418
)	
Plaintiff/Counter Defendant,)	JUDGE ECONOMUS
)	
v.)	MAGISTRATE GALLAS
)	
BLUEGRASS PRODUCTS, LLC,)	STIPULATED JUDGMENT OF
)	DISMISSAL WITHOUT PREJUDICE
Defendant/Counter Plaintiff.)	

Based upon the stipulation of the parties and in accordance with the terms of their Agreement settling this matter, a dismissal as to all claims and counterclaims that were raised or could have been raised in this action may be entered by judgment of this Court dismissing this action, without prejudice, pursuant to Fed. R. Civ. P. 41(a). Further, the dismissal shall be without costs, expenses or fees to any party.

IT IS HEREBY ORDERED AND ADJUDGED that a judgment of dismissal as to all of Plaintiff's claims and all of Defendant's counterclaims raised, or that could have been raised, be entered without prejudice, and that the dismissal shall be without costs, expenses or fees to any party. The Court retains jurisdiction for enforcement of the parties Agreement.

Dated this 13th day of May, 2008

s/Peter C. Economus

HON. PETER C. ECONOMUS

IT IS SO STIPULATED:

/s/ Robert J. Herberger

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